

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND)	OFFICER FOR CONSTRUCTION
)	
)	
IN THE MATTER OF: PROTEST OF)	DECISION
AGENCY DETERMINATION)	
)	
ANDERSON HOUSE RESTORATION)	
)	
STATE PROJECT H51-9763-PG)	
)	POSTING DATE: February 3, 2006
HUSS, INC.)	
vs.)	
MEDICAL UNIVERSITY OF)	
SOUTH CAROLINA)	
)	

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Huss, Inc. (“Huss”) under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code (“the Code”), for an administrative review of a determination by the Medical University of South Carolina (“MUSC”) to reject Huss's bid after MUSC has posted notice of its intent to award a contract to Huss on the Anderson House Restoration project (“the Project”). Pursuant to §11-35-4210(3) of the Code, the CPOC evaluated the issues for potential resolution by mutual agreement and determined that mediation was not appropriate. A decision is issued following a thorough review of the documents and the relevant law.

NATURE OF THE PROTEST

MUSC received bids for construction of the Project. On December 19, 2005 MUSC issued a Notice of Intent to Award in favor of Huss. [Exh. 1] A protest of this decision was filed by NBM Construction Inc., a disappointed bidder, and further action on the procurement was stayed automatically.¹ [§11-35-4210(7)] On January 12, 2006 MUSC issued a letter to Huss, declaring Huss’s bid non-responsive and rejecting Huss’s bid. [Exh. 2] On January 23, 2006 Huss protested this action.

¹ The hearing on the merits is scheduled before the CPOC on February 9, 2006 for resolution of NBM's protest.

ANALYSIS

Notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids shall be given by public notice. [§11-35-3020(c)] MUSC posted such notice by issuing state form SE-370, *Notice of Intent to Award*. [Exh. 2] This form contains the following statement:

The Agency has determined that the below-named bidder is responsible in accordance with the requirements of the Bidding Documents and has submitted the lowest responsive bid. The Agency hereby announces its intent to enter into a contract with this Bidder for the construction of the above-named Project, subject to the provisions of SC law.

Cancellation after award but prior to performance may be permitted in accordance with regulations promulgated by the board. [§11-35-1520(7)] By regulation of the board, the Chief Procurement Officer shall make all determinations with respect to cancellation of an award prior to performance. [Reg. 19-445-2085C].

The CPOC finds that, having made a determination of responsiveness and responsibility and given due public notice of that determination and the intent to award, MUSC lacked the authority to reverse its decision, reject Huss' bid, or cancel the award to Huss. MUSC's action was void *ab initio*. Pending resolution of the issues raised in NBM's protest, the posted Notice of Intent to Award remains in effect. Accordingly,

PROTEST GRANTED

The CPOC notes that Huss's letter of protest advanced an issue of protest against "any potential award" to NBM. The Code provides for the right to protest only solicitations and awards, not "potential awards." Accordingly, this issue of protest is dismissed. As noted above, a hearing on the merits of MUSC's initial award decision is scheduled. Any award made pursuant to the resolution of that protest must be made in a manner that complies with the provisions of the Code. [§11-35-4310(2)(c)]. Those provisions include Huss's right to protest that award.

DECISION

It is the decision of the Chief Procurement Officer for Construction that the Notice of Intent to Award issued by the Medical University of South Carolina on December 19, 2005 in favor of Huss, Inc. is valid and has full force and effect.

A handwritten signature in black ink that reads "Michael M. Thomas". The signature is written in a cursive style with a large initial 'M' and 'T'.

Michael M. Thomas
Chief Procurement Officer
for Construction

February 3, 2006
Date

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILING FEE: Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm